

*In the Matter of Joseph Bukofsky, et al., Sanitation Driver (PM0651G),
Woodbridge Township*
DOP Docket No. 2006-1396
(Merit System Board, decided March 22, 2006)

Joseph Bukofsky, Joseph Buonavolonta, Robert Hodes, Elisha Ingram Jr., Thomas Kauffman, Michael Mondano, Michael Rizzo, Thomas Stuppiello and Alfred Thomas appeal their scores on the Sanitation Driver (PM0651G), Woodbridge Township promotional examination. These appeals were consolidated due to related issues.

The subject promotional examination had a closing date of June 21, 2005 and was processed as a ranked unassembled examination (RUE), *i.e.*, candidates were ranked on the eligible list based on an evaluation of their experience as listed on their applications. It is noted that the names of 28 candidates were placed on the eligible list. Appellants ranked 26, 12, 21, 20, 22, 10, 23, 13 and 25 respectively. The list has been certified, but a hold was placed on the list pending the outcome of this decision.

The unassembled examination standard on which the scoring process for this examination was based gave full credit for up to ten years of experience in driving a truck with a tandem/dual rear axle and a gross vehicle weight of at least 26,000 pounds and with auxiliary equipment such as a snow plow, salt spreader, power take-off, winch, lift body, or hydraulic lifting device. No credit was awarded for education or training, and half credit was not given. The announcement was open to all candidates in the competitive division who met the open-competitive requirements (one year of applicable experience), and to all candidates in the non-competitive division in the titles of Laborer and Laborer Heavy who met the open-competitive requirements. As noted in the Candidate Review Form - Unassembled Examination Scoring System, which appellants should have received at the examination review, credit could not be awarded for experience gained more than ten years prior to the announcement, in this case, prior to July 1995.

The promotional announcement contained the following, "Special Note: Employment lists resulting from this announcement may be developed by an evaluation of driving experience listed on your applications. Please indicate the type(s) of vehicle(s) operated, such as a small or large van, 45 passenger bus, ¾ ton truck, tractor trailer, etc. Also please indicate the type of license(s) (auto, bus, or articulated license) and related driving duties you have performed." It also stated, "If you list experience in titles other than driving titles, you MUST indicate the percentage (%) of driving time for each position listed, or the experience will not be evaluated." The application states, "You may be declared ineligible or you may not receive proper credit for scoring purposes if you do not properly complete your application," and, "Since your application may be your only 'test paper,' be sure it is complete and accurate. Failure to complete your application properly may cause you to be declared ineligible, lower your score, or possibly cause you to fail."

A personnel clerk from Woodbridge interviewed some candidates to get clarifying information from them prior to the closing date. If a candidate indicated that he drove the appropriate truck, he was asked what percentage of the time the truck(s) had been driven. The personnel clerk indicated the given information in pen on the applications. The personnel clerk verified that applicants were aware of any changes or additions to their applications and that each agreed with the amount of time she had written down. If a candidate did not bring his application to her, it was not checked. Thus, some applicants failed to provide the proper percentage of driving time.

As stated previously, only the last ten years were used in scoring. Each year of experience was awarded two points and the points were added to 70.000, the minimum UE score. Since only ten years were scored, the maximum UE score was 90.000. Seniority (70.000 for all candidates) was worth 20% and the UE score was worth 80%. The final average was derived by adding the two scores.

Mr. Bukofsky listed that, from July 1995 to the closing date, he worked full-time as a Laborer Heavy for Woodbridge. He indicated to the personnel clerk that in his full-time position, he drives at least one day per week, when the other driver is out. Also, he indicated that he worked part-time, 32 hours per week, as a Truck Driver/Cutter with Pro-Stump Tree Service. Mr. Bukofsky was credited with two years of full-time experience (prorated, from July 1995 to June 2005 at 20% since he drove one day per week). He did not receive credit for the second position as he indicated that he was performing two functions, cutter and truck driver, and he did not state the percentage of time or number of hours per week that he was driving. On appeal, Mr. Bukofsky states that his score was unjust given his experience and seniority.

Mr. Buonavolonta listed that, from July 1996 to the closing date, he worked full-time as a Laborer Heavy for Woodbridge, and he indicated to the personnel clerk that as a Laborer Heavy, he drives at least 40% of the time. He simultaneously worked full-time as a Truck Driver with Cipas Container Service from August 1997 to the closing date. He also indicated that he worked full-time from July 1995 to June 1996 as a Machine Operator at Operating Engineers, Local 825, driving tandem dump trucks 50% of the time. Mr. Buonavolonta was credited with seven years of full-time experience (from August 1997 to June 2005 at Cipas Container Service), five months of experience (prorated, from July 1996 to July 1997 at 40% as a Heavy Laborer), and six months of experience (prorated, from July 1995 to June 1996 at 50% at Operating Engineers, Local 825). Thus, Mr. Buonavolonta was credited with eight years, ten months of experience for a final average of 87.667. On appeal, Mr. Buonavolonta requests that his score be reevaluated since he "has more experience driving this type of truck," he taught three other (unnamed) candidates their jobs and took them to get their CDLs, and he has held his CDL for five more years than they have.

Mr. Hodes listed that, from May 1985 to the closing date, he worked full-time as a Laborer Heavy for Woodbridge driving 50% of the time, except he drove 100% of the time from November 2004 to the closing date, June 2005. He was credited with eight months of full-time experience (from November 2004 to June 2005), and four years, eight months of experience (prorated, from July 1995 to October 2004 at 50%). On appeal, Mr. Hodes states that he has been doing the job since 1985 and driving full-time since November 2004. He presents a list of his job duties.

Mr. Ingram listed that, from February 1997 to the closing date, he worked full-time as a Laborer Heavy for Woodbridge. He indicated to the personnel clerk that he drove 70% of the time "for several years." In addition, he indicates that from July 1995 to January 1997 he was a Waste Oil Recovery Representative. For duties of that position, he wrote that "As a driver I collected hazardous and nonhazardous waste oil, antifreeze and oily water from auto dealerships, garages and township municipalities. Covered the State of NJ, parts of NY and Penn." He did not list the type of truck he drove. Mr. Ingram was credited with five years, eleven months of experience (prorated, from February 1997 to June 2005 at 70%). He did not receive credit as a Waste Oil Recovery Representative as he did not indicate that he was driving a truck as described in the announcement. On appeal, Mr. Ingram states that higher ranking candidates had less driving experience than he does. He describes his CDL license carried in his position prior to July 1995.

Mr. Kauffman listed that, from July 1995 to the closing date, he worked full-time as a Laborer Heavy for Woodbridge. He indicated to the personnel clerk that in his full-time position, he drives 50% of the time, which prorates to five years of full-time experience. On appeal, he states that he drove 75% of the time. Also, he provides information regarding two positions not listed on his application. One position was prior to July 1995. For the other, the appellant does not provide a title for the position, nor does he provide specific dates of employment or hours worked per week. He states that for "the last eight to ten years" he has been driving a single axle oil tank truck approximately eight months a year. It is noted that applicable experience involves driving a truck with a tandem/dual rear axle.

Mr. Mondano listed that, from July 1995 to the closing date, he worked full-time as a Laborer Heavy for Woodbridge. He indicated to the personnel clerk that in his full-time position, he drives 90% of the time, which prorates to nine years of full-time experience. On appeal, he states that his seniority was incorrectly calculated and should be higher.

Mr. Rizzo listed that, from July 1995 to the closing date, he worked full-time as a Laborer Heavy for Woodbridge. In the duties section of the application, he wrote, "I've been driving the garbage truck on and off every year for the 17 years I've been employed but driving (100%) steady for the last three years." He received

credit for three years of full-time experience. The remainder of his driving experience was not quantified, that is, it could not be determined how much he was driving. On appeal, Mr. Rizzo states that he should have been informed by the union and by the personnel office how to properly complete his application. He states that it was unfair that everyone received the same seniority score. Lastly, he states that he has driven a garbage truck every day for 17 years and he provides signed affidavits from coworkers.

Mr. Stuppiello listed that, from December 1995 to the closing date, he worked full-time as a Motor Broom Operator for Woodbridge. Nonetheless, the personnel clerk indicated that he was a Motor Broom Operator from June 2001 to the closing date, driving 100% of the time, and that from December 1995 to June 2001 he was a Laborer Heavy driving 80% of the time. He listed a third position from July 1995 to December 1995 as Operator/Supervisor with P.J. Segro performing a variety of tasks. However, appellant does not list the amount of time he was driving a truck as described. He received credit for four years of full-time experience from July 2001 to June 2005, and for four years, six months of experience (prorated, from December 1995 to June 2001 at 80%). On appeal, Mr. Stuppiello states that his title, Motor Broom Operator, should afford more credit than other titles, that he holds a Class B CDL, and that he has college level credits. Thus, he believes he should have scored higher on the list.

Mr. Thomas listed that, from July 1995 to the closing date, he worked full-time as a Laborer Heavy for Woodbridge. He indicated on his application that he "drove trucks since 1995" and to the personnel clerk that he drove about 30% of the time. As Mr. Thomas was not specific as to when he began driving in 1995, according to longstanding policy, he was credited only with one month of credit (December 1995) for that year. In total, Mr. Thomas was credited with two years, eleven months (prorated, December 1995 to June 2005 at 30%). On appeal, he argues that his seniority score is too low, and that he thought the application was to take the test and was not the test itself. He states that no one provided proof of the amount of time that they drove.

After the written appeals were received, some appellants contacted the Division of Merit System Practices and Labor Relations by phone and stated that other candidates had misrepresented their time driving the appropriate vehicles. Based on the discrepancies noted (i.e., percentage of time on application not the same as percentage of time on appeal, lack of specifics regarding when trucks were driven, inconsistencies with duties and amount of time spent driving), candidates were asked by the Division of Selection Services to complete a supplemental application wherein they were asked to provide the percentage of time they have operated applicable equipment for each position. They were asked to have the supplemental application notarized and were told that falsification of information would be grounds for disqualification.

Also, the appointing authority was asked to provide to the candidates the percentage of time that they were driving a truck, with a tandem/dual rear axle and a gross vehicle weight of at least 26,000 pounds and with auxiliary equipment, during their employment with Woodbridge for the last ten years. The appointing authority also supplied this information in conjunction with these appeals. The appointing authority provided a chart which listed each applicant and the percentage of time driving a truck for each of ten years from 1996 to 2005. It indicated that the percentages indicated were calculated from the total days worked per year and the amount of time worked out-of-title per year. It states that no credit was given for sick, vacation, disability or holiday time. In order to arrive at an average percentage for this information, the Division of Selection Services totaled the percentages for the ten years and divided by ten (unless a different number of years was used based on employment history).

All applicants except one returned the supplemental applications. A comparison of the percentages from the original applications, the supplemental applications and the appointing authority demonstrates major inconsistencies. For example, one original application indicates 100% driving time, the supplemental indicates 60% and the appointing authority indicates 10%. It appears that on the supplemental application, this candidate used only the percentage from 2005, which was highest for him, and he did not average his driving over his employment. On another, the original application indicates 100% driving time, the supplemental indicates 10% and the appointing authority indicates 1%. On a third, the original application indicates 60% driving time, the supplemental indicates 100% and the appointing authority indicates 10%. On a fourth, the original application indicates 20% driving time, the supplemental indicates 100% and the appointing authority indicates 3%. In addition, the information regarding outside employment was not verified.

CONCLUSION

At the outset, it is noted that the Department of Personnel (DOP) has a duty to insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness. In this light, particularly when an examination is conducted utilizing the ranked unassembled examination process, it is essential that applicants provide complete and accurate information on their applications. As noted on the announcement, candidates were required to indicate what type of truck they were driving and the percentage of driving time for each position that was not a driving title. Many candidates did not complete this information and the personnel clerk met with some candidates to get this information for their positions in Woodbridge. She did not meet with others, and some applications were incomplete. Nonetheless, the responsibility for proper completion of the application rests with the applicant, not with a union or with the

appointing authority. Positions not listed on the application, positions without a percentage of driving time or number of hours driving per week, and positions without the type of truck listed were appropriately not given credit. *N.J.A.C. 4A:4-2.1(f)* provides that an applicant may amend a previously submitted application prior to the closing date. Thus, any additional information submitted on appeal was not considered.

According to *N.J.A.C. 4A:4-2.2*, the Department of Personnel has the authority to determine the most appropriate selection instrument to use in assessing candidates in a given competitive title. These can include written tests, oral tests, performance tests, physical performance tests, evaluations of education/training/experience, assessment exercises, or other appropriate selection methods. For the subject examination, a decision was made to select individuals for appointment by using an RUE, which generally would be appropriate.

Regarding the information provided by all candidates, the DOP does not verify the responses of every candidate where an RUE is utilized. However, the process provides a number of checks and balances in an effort to select qualified personnel. For example, the DOP has a restriction on the use of out-of-title work in order to establish eligibility in a promotional examination, State personnel records are verified in the selection and appointment process, and appointing authorities may contact references to verify work experience and specialized credentials. It is not feasible for the DOP to verify the responses of every candidate; however, by working in conjunction with Human Resource offices of the various appointing authorities, every reasonable effort is made to ensure the veracity of applicant information. *See In the Matter of Carol Brozosky* (MSB, decided March 27, 2002).

In this matter, the Board is confronted with scoring anomalies which cannot reasonably be corrected given the information submitted and the unusual facts of this case. Candidates were asked for percentages of time driving applicable vehicles while in the titles Laborer and Laborer Heavy, and many provided percentages which differed significantly from those on the original applications and those provided by the appointing authority. In addition, an independent review of the entire examination package reveals further scoring anomalies regarding application of the scoring criteria to candidates' experience. As such, appropriate relief must be considered in light of the entire pool of candidates for this examination to ensure a proper assessment of each candidate's qualifications.

N.J.A.C. 4A:4-3.3(b) provides that an eligible list may be cancelled in cases of fraud, test invalidity, Department error or other good cause. Additionally, *N.J.A.C. 4A:4-3.8* provides that an error may be corrected at any time during the life of the list and the Commissioner shall determine whether such correction shall affect any prior appointments or certifications. In a different situation, updating the percentage of driving time would have been sufficient. However, under these

circumstances, it is apparent that this candidate population cannot be tested appropriately with an RUE. Fortunately, in this case, although the eligible list has been certified, disposition of the certification has been stayed pending the outcome of this appeal. Thus, no property or tenure rights are at issue in this case.

Thus, it is appropriate to cancel the eligible list and administer a new examination to all eligibles ranked thereon. As to the format of this new examination, merit and fitness to serve in the subject title can be ascertained through administration of a multiple-choice test designed to measure knowledge and abilities for this title. See *In the Matter of Robert E. Erikson, et al.* (MSB, decided May 9, 2000), *aff'd*, Docket No. A-5724-99T3 (App. Div. March 14, 2002) and *In the Matter of Anthony T. Falconiero and James P. Falconiero, Public Works Superintendent (PM0731A), City of Camden* (MSB, decided April 23, 2003).

As to seniority scores, when an announcement is open to open-competitive requirements, seniority credits are given for all periods of service in a permanent capacity in announced titles currently in the competitive division. The subject examination was only open to applicants in the competitive division who met the open competitive requirements and was not open to specified titles in the competitive division. The titles Laborer and Laborer Heavy are in the non-competitive division. This examination is for a position in the competitive division, and all candidates were required to meet the open-competitive requirements. As such, all candidates correctly received a seniority score of 70.000, and no further seniority can be given as there were no titles in the competitive division listed on the announcement.

Regarding possession of a CDL, the promotional announcement indicated that proof of the CDL must be presented to the appointing authority prior to appointment, and the appointing authority has the responsibility for ensuring that employees possess the required license. However, possession of a CDL or type of CDL, as well as education, has no bearing on the scoring process.

ORDER

Therefore, it is ordered that the subject eligible list and the outstanding certification be cancelled and that the subject promotional examination be re-administered to all eligibles utilizing a multiple choice format. To ensure optimum use of the list, a current list promulgation date shall be utilized.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.